SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
FEB 27 1969
F. DAVIS, CLERK

IN THE

# Supreme Court of the United States

October Term, 1968

No. 901

ALLEN F. BARKER, *et al.*,

*Petitioners,*

—versus—

WENDELL G. HARDWAY, President of Bluefield State College, *et al.*,

*Respondents.*

## REPLY BRIEF OF PETITIONERS

ROY LUCAS
20 East Ninth Street
New York, N. Y. 10003

MELVIN L. WULF
156 Fifth Avenue
New York, N. Y. 10010

HERBERT H. HENDERSON
317 Ninth Street
Huntington, West Virginia 25701

*Attorneys for Petitioners*

NORMAN DORSEN
School of Law
New York University
Washington Square
New York, N. Y. 10003

LEWIS M. STEEL
55 Central Park West
New York, N. Y. 10023

*Of Counsel*

IN THE

# Supreme Court of the United States

October Term, 1968

No. 901

---

ALLEN F. BARKER, *et al.*,

*Petitioners,*

—versus—

WENDELL G. HARDWAY, President of Bluefield State College, *et al.*,

*Respondents.*

---

## REPLY BRIEF OF PETITIONERS

Respondents' brief raises two factual issues which should be clarified in order to aid the Court in evaluating the petition.

1. Respondents on pages 15 and 24 of their brief state that petitioners were suspended *ex parte* "only" after they either refused to come to President Hardway's office or could not be found. Respondents then develop a legal argument which attempts to justify suspension of students without a hearing who refused to make themselves available to college officials for the purpose of discussing allegations of disciplinary violations. Whatever the merits of this argument, respondents have simply misstated the facts. Four different Bluefield College officials testified that President Hardway sought out petitioners only for the purpose of having them pick up their letters of suspension (T. 854-855; 925-926; 1046; 1075-1076). Clearly, the students had already been judged *ex parte;* their alleged refusal to personally pick up their suspensions is irrelevant to the due process issues in this case.

2. Respondents' brief raises questions of fact concerning sit-ins, unauthorized meetings, fires, classroom disturbances, and the events which occurred after President Hardway left the football stands at the October 14th game. Yet President Hardway himself testified in the district court that "our concern was with the violence that occurred while we were in the [football] stands and has been" (T. 380). The answer was given after the President had been asked a series of questions which sought to determine the specific misconduct charged against petitioners. The letters of suspension themselves (30a) should have served to limit respondents' presentation of facts to the October 14th football game.

Respectfully submitted,

ROY LUCAS
20 East Ninth Street
New York, N. Y. 10003

MELVIN L. WULF
156 Fifth Avenue
New York, N. Y. 10010

HERBERT H. HENDERSON
317 Ninth Street
Huntington, West Virginia 25701

*Attorneys for Petitioners*

NORMAN DORSEN
School of Law
New York University
Washington Square
New York, N. Y. 10003

LEWIS M. STEEL
55 Central Park West
New York, N. Y. 10023

*Of Counsel*